

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF MISSISSIPPI
GREENVILLE DIVISION

SURFER INTERNET §
BROADCASTING OF §
MISSISSIPPI, LLC, §
§
Plaintiff, §
§
v. §
§
XM SATELLITE RADIO INC., §
and §
SIRIUS SATELLITE RADIO INC., §
§
Defendants. §

Civil Action No. 4:07-cv-34-m-b

JURY TRIAL DEMANDED

FILED
FEB 27 2007
DAVID CREWS, CLERK
B. *[Signature]* Deputy

PLAINTIFF'S ORIGINAL COMPLAINT

Plaintiff Surfer Internet Broadcasting of Mississippi, LLC (“Plaintiff” or “Surfer”), by and through its undersigned counsel, files this Original Complaint against XM Satellite Radio Inc. and Sirius Satellite Radio Inc. (collectively “Defendants”) as follows:

NATURE OF THE ACTION

1. This is a patent infringement action to stop each Defendant’s infringement of Surfer’s United States Patent No. 6,766,376 entitled “Streaming Media Buffering System” (the “‘376 patent”; a copy of which is attached hereto as Exhibit A). Surfer is the assignee of the ‘376 patent. Surfer seeks injunctive relief and monetary damages.

PARTIES

2. Plaintiff Surfer Internet Broadcasting of Mississippi, LLC is a limited liability company organized and existing under the laws of the State of Mississippi. Surfer maintains its principal place of business at 800 Highway 1 South, Suite B-23, Greenville, Mississippi 38701. Surfer is the assignee of all rights, title, and interest in and to the ‘376 patent, including the right to sue for infringement and recover past damages.

3. Defendant XM Satellite Radio Inc. ("XM Radio") is a corporation organized and existing under the laws of the State of Delaware, with its principal place of business located at 1500 Eckington Place, Northeast, Washington, D.C. 20002. XM Radio may be served via its registered agent for the service of process, Corporation Service Company, 506 South President Street, Jackson, Mississippi 39201.

4. Defendant Sirius Satellite Radio Inc. ("Sirius") is a corporation organized and existing under the laws of the State of Delaware, with its principal place of business located at 1221 Avenue of the Americas, 36th Floor, New York, New York 10020. Sirius may be served via its registered agent for the service of process, CT Corporation System, 645 Lakeland East Drive, Suite 101, Flowood, Mississippi 39232.

JURISDICTION AND VENUE

5. This action arises under the Patent Laws of the United States, 35 U.S.C. § 1 *et seq.*, including 35 U.S.C. §§ 271, 281, 283, 284, and 285. This Court has subject matter jurisdiction over this case for patent infringement under 28 U.S.C. §§ 1331 and 1338(a).

6. The Court has personal jurisdiction over each Defendant because: each Defendant has minimum contacts within the State of Mississippi and the Northern District of Mississippi; each Defendant has purposefully availed itself of the privileges of conducting business in the State of Mississippi and in the Northern District of Mississippi; each Defendant has sought protection and benefit from the laws of the State of Mississippi; each Defendant regularly conducts business within the State of Mississippi and within the Northern District of Mississippi; and Plaintiff's causes of action arise directly from Defendants' business contacts and other activities in the State of Mississippi and in the Northern District of Mississippi.

7. More specifically, each Defendant, directly and/or through intermediaries, ships, distributes, offers for sale, sells, and/or advertises (including the provision of an interactive web page) its products and services in the United States, the State of Mississippi, and the Northern District of Mississippi. Upon information and belief, each Defendant, through their respective Internet radio services, has committed patent infringement in the State of Mississippi and in the Northern District of Mississippi, has contributed to patent infringement in the State of Mississippi and in the Northern District of Mississippi, and/or has induced others to commit patent infringement in the State of Mississippi and in the Northern District of Mississippi. Each Defendant's Internet radio service solicits customers in the State of Mississippi and in the Northern District of Mississippi. Each Defendant has many paying subscribers who are residents of the State of Mississippi and the Northern District of Mississippi and who each use respective Defendant's Internet services in the State of Mississippi and in the Northern District of Mississippi.

8. Venue is proper in the Northern District of Mississippi pursuant to 28 U.S.C. §§ 1391 and 1400(b).

COUNT I – PATENT INFRINGEMENT

9. United States Patent No. 6,766,376, entitled "Streaming Media Buffering System," was duly and legally issued by the United States Patent and Trademark Office on July 20, 2004 after full and fair examination. Surfer is the assignee of all rights, title, and interest in and to the '376 patent, and possesses all rights of recovery under the '376 patent, including the right to sue for infringement and recover past damages.

10. Each Defendant provides Internet radio services and maintains an Internet radio website. XM Radio's Internet radio website may be found at <http://www.xmradio.com/>. Sirius' Internet radio website may be found at <http://www.sirius.com/>.

11. Upon information and belief, each Defendant maintains an Internet radio website that has infringed and is infringing the '376 patent. Upon information and belief, each Defendant has also induced infringement and contributed to infringement of the '376 patent by others.

12. Each Defendant's aforesaid activities have been without authority and/or license from Surfer.

13. Surfer is entitled to recover from the Defendants the damages sustained by Surfer as a result of the Defendants' wrongful acts in an amount subject to proof at trial.

14. Upon information and belief, each Defendant's infringement of the '376 patent is willful and deliberate. Upon information and belief, each Defendant's inducement and contributory infringement of the '376 patent is willful and deliberate. As a result, Surfer is entitled to increased damages under 35 U.S.C. § 284 and to attorneys' fees and costs incurred in prosecuting this action under 35 U.S.C. § 285.

15. Defendants' infringement of Surfer's exclusive rights under the '376 patent will continue to damage Surfer, causing irreparable harm for which there is no adequate remedy at law, unless enjoined by this Court.

JURY DEMAND

16. Plaintiff demands a trial by jury on all issues.

PRAYER FOR RELIEF

Plaintiff Surfer Internet Broadcasting of Mississippi, LLC respectfully requests the following relief:

- A. An adjudication that the Defendants have infringed and continue to infringe claims of the '376 patent;
- B. An award to Surfer of damages adequate to compensate Surfer for the Defendants' acts of infringement together with prejudgment interest;
- C. An award of Surfer's enhanced damages, up to and including trebling of Surfer's damages pursuant to 35 U.S.C. § 284, for the Defendants' willful infringement;
- D. An award of Surfer's costs of suit and reasonable attorneys' fees pursuant to 35 U.S.C. § 285 due to the exceptional nature of this case, or as otherwise permitted by law;
- E. A grant of permanent injunction pursuant to 35 U.S.C. § 283, enjoining the Defendants from further acts of (1) infringement, (2) contributory infringement, and (3) active infringement with respect to the claims of the '376 patent; and
- F. Any further relief that this Court deems just and proper.

RESPECTFULLY SUBMITTED on this the 27/2 day of February, 2007.



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